



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. MCTIGUE  
DIRECTOR

April 24, 1990  
AO-90-15

Rick Rendon  
Capital Services, Inc.  
116 Newbury Street  
5th Floor  
Boston, MA 02116

Dear Mr. Rendon:

This letter is in response to your request for an advisory opinion.

You have inquired whether it is permissible for candidates in the state of Massachusetts to use a "900" telephone number for fundraising purposes.

Your inquiry was not specific as to whether you wished to use an interstate "900" number supplied by AT&T through its Multiquest Service (or supplied by another long distance telephone provider through a similar service) or an intrastate "976" number supplied by New England Telephone ("NET") through its Information Delivery Service ("IDS"). (We do not distinguish between "976" and "940" numbers, the latter of which is for adult entertainment. We have not determined whether "940" numbers would be available for political purposes but do not believe the analysis below would be much different.) The research we have undertaken indicates that each of these services offers different features. We were not, however, able to determine with any specificity the features of AT&T's Multiquest Service (or similar service supplied by another provider) and thus can offer no separate opinion about Massachusetts candidates and political committees using an interstate "900" number for fundraising purposes.

We are prepared, however, to address the issue of Massachusetts candidates and political committees using an intrastate "976" number for fundraising purposes. The advice given in this opinion is equally applicable if a candidate or political committee contracts directly for IDS with NET or through an organization such as Capital Services, Inc. acting as a service bureau, although some of the specifics in each instance will vary. We will address those differences below.

### Description of "976" Service

Through IDS, an information provider ("IP") (whether a candidate, a committee or a service bureau) develops, markets and provides information through an announcement program to incoming callers using a "976" number.<sup>1</sup> NET, on the other hand, provides network transport and general billing services. NET also charges the IP directly for establishing the service and providing/maintaining the IDS network.

The charges billed to a customer using the "976" number may be broken into two types of charges: those associated with the transport of the call by NET (the "transport charge") and those associated with the use of the information provided by the IP (the "information use charge"). The transport charge is automatically billed by NET to the caller on the caller's monthly telephone bill. The IP must bill the caller for the information use charge unless the IP elects to have NET bill for this charge. For the reasons outlined below, it is the opinion of this office that if an IP does not bill the information use charge directly to the caller the provisions of M.G.L. c.55 will be violated.

### Application of the Campaign Finance Law

There are several provisions of M.G.L. c.55, the campaign finance law, which would affect the use of a "976" number for fundraising purposes by candidates and committees in Massachusetts. The applicable provisions, together with the concerns of this office, are discussed separately below.

#### Corporate Contribution

Section 8 of M.G.L. c.55, provides, in pertinent part:

No corporation carrying on the business of a bank, trust, surety indemnity, safe deposit, insurance,

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1. A "976" number does not provide a fundraising mechanism per se for candidates or committees. Unlike other telephone numbers over which pledges may be accepted, a "976" number provides a means by which callers may obtain information provided by an IP. The IP in turn may charge the callers for this information service. The purchasers of such service become "contributors" pursuant to the definition of a contribution as a "purchase from an individual, candidate, or political committee, or person acting on behalf of said individual, candidate, or political committee, whether through the device of tickets, advertisements or otherwise, for fundraising activities" contained in section 1 of M.G.L. c.55.

railroad, street railway, telegraph, telephone, gas, electric light, heat, power, canal, aqueduct, or water company, no company having the right to take land by eminent domain or to exercise franchises in public ways, granted by the commonwealth or by any county, city or town, no trustee or trustees owning or holding the majority of the stock of such a corporation, no business corporation incorporated under the laws of or doing business in the commonwealth and no officer or agent acting in behalf of any corporation mentioned in this section, shall directly or indirectly give, pay, expend, or contribute or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding or promoting or antagonizing the interest of any political party.

In addition, section 1 of M.G.L. c.55 defines a contribution as "a contribution of money or anything of value to an individual, candidate, political committee, or person acting on behalf of said individual, candidate or political committee . . . and shall include any . . . loan, advance, deposit or money . . . except a loan of money to a candidate by a national or state bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business . . ." (emphasis added).

It is the understanding of this office that if NET provides billing services to the IP by billing callers for the information use charge on NET's bill, NET will advance money to the IP prior to the time NET actually collects money from the caller. It is therefore the contention of this office that if NET were to provide such billing services on behalf of an IP who is a candidate or political committee, an illegal advance or loan of money would be made to such candidate or committee. While NET could ostensibly provide such billing services to an IP which is a service bureau (and which presumably would not forward any proceeds to any candidate or political committee before receiving the money from the caller), this office has concerns about the proper identification of callers as contributors as outline below.

#### Identification of Contributors

Section 2 of M.G.L. c.55 requires that candidates and political committees maintain records detailing the full name and residential address of each person who has made a contribution in excess of \$50 in a reporting period (or whose aggregate contributions in such reporting period exceed \$50). Likewise, section 18 of M.G.L. c.55 requires that candidates and political committees disclose the full name and address of such contributors on the campaign

finance reports they file.

It is the understanding of this office that if an IP chooses to bill callers directly for the information use charge, NET will provide the billing name and address of the caller. Pursuant to the tariff filed by NET, this information may not be disclosed to any third party not specifically involved with or retained for billing or collection activities. Disclosure of this information to the general public is specifically prohibited.

Thus, whether an IP is a service bureau or a candidate or political committee, the NET tariff provisions are in opposition to the record-keeping and disclosure requirements of M.G.L. c.55. In addition, this office has concerns that the person who uses the "976" number will not be the same person who is billed for such use and thus not the true donor.<sup>2</sup>

#### Permitted Use of "976" Numbers

While the analysis undertaken above would seem to preclude the use of a "976" number by candidates and committees, either directly or through a service bureau, for fundraising purposes, this office believes a workable solution exists.

If an IP directly bills callers for the information use charge, and at the same time provides the caller with a contributor acknowledgement card which is returned to the IP, it is the opinion of this office that the requirements of M.G.L. c.55 may be met. Specifically, the acknowledgement card would be sent to the person identified as the customer in the billing information provided to the IP by NET. The true contributor, whether such customer or not, would be required to complete, sign and return the card to the IP. The card would include the contributor's name and address and would acknowledge the candidate's or committee's right to maintain and disclose such information in accordance with the requirements of M.G.L. c.55. If the IP is a service bureau, such acknowledgement cards together with the remittances (in the form of checks made payable to the candidate or committee) for the information use charge as gross proceeds (rather than as proceeds net of the service bureau's fees) must be forwarded to the candidate or committee in the form received by the service bureau. Any

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2. Section 10 of M.G.L. c.55 states that "no person shall, directly or indirectly, make a campaign contribution in any name except his own nor in any manner for the purpose of disguising the true origin of the contribution nor unless he makes his name and residential address known to the person receiving such contribution at the time such contribution is made . . . ."

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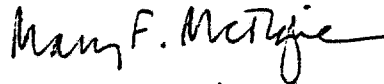
proceeds due the service bureau would in turn be paid by the candidate or committee and disclosed in accordance with the provisions of section 18 of M.G.L. c.55 dealing with expenditures.

This office would be happy to work with you to review the appropriate format of such an acknowledgement card.

This opinion has been rendered on the basis of the representations made in your letter and such independent investigation of the "900" and "976" service as we deemed necessary. This opinion has been rendered solely in the context of M.G.L. c.55.

Please do not hesitate to contact this office should you have additional questions.

Very truly yours,



Mary F. McTigue  
Director

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